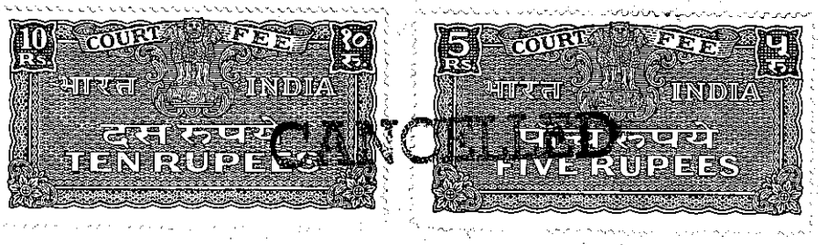

-1-

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

Civil Revision No. 150 /2003

APPLICANT/ REVISIONER/ Defendant No. 1. : KANHAI RAM PATEL, Aged 55 yrs.
S/o Shri Mohan Singh Patel
Village Barmuda,
Tah. & Distt. Raigarh (C.G.)

Versus

NON APPLICANTS Plaintiffs 1 to 3 RS

1. Mrs. Sumitra Bai W/o Shri Mohan Singhm Vill. Barmuda, Tah. & Distt. Raigarh (C.G.)
2. Narayan S/o Shri Mohan Singh Vill. Barmuda, Tah. & Distt. Raigarh (C.G.)
3. Damrudhar Patel S/o Shri Mohan Singh Vill. Barmuda, Tah. & Distt. Raigarh (C.G.)
4. Santosh Kumar Patel S/o Shri Hansh Ram Patel Vill. Murali Pali, P.O.Kirodimal Nagar, Tah. & Distt.Raigarh (C.G.)
5. Smt. Anita Patel Vill. Anwara Bhata, P.O.Tarapur Tah. & Distt. Raigarh (C.G.)
6. Smt. Triveni Bai W/o Prahlad Patal Vill. Rani Sagar, P.O.Kharsia Tah. & Distt. Raigarh (C.G.)
7. Doleshwar Patel, S/o Shri Mohan Singh, Vill. Barmuda, Tah. & Distt.Raigarh (C.G.)
8. State of Madhya Pradesh now Chhattisgarh.

P.R. No. ..... dated 18/5/03 Presented by Shri Pra. Mandal Advocate

Amendment incorporated by me, as ordered by Hon'ble High Court vide order dt. 15.5.03

Def. no. 3 to 5

Application for revision under Section 115 of the Code of Civil Procedure, 1908.

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(82)

आदेश पत्रक

मामला क्रमांक Civil Revision No. 150/2003 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	12/05/2005 Shri Ravish Verma, learned counsel for petitioner. Shri S.N. Nande, learned counsel for respondents No. 1 to 3. Shri J.D. Bajpai, learned Govt. Advocate for respondent No.7/State. None for other respondents. Parties are heard on the question of maintainability. Respondents No. 1 to 3 filed a Civil Suit for partition and also for mesne profits. Learned trial Court decided the preliminary issue regarding jurisdiction and held that the Civil Court has no jurisdiction to try the suit, hence passed an order, to return the plaint for presentation before the Competent Court. The said order dated 27/06/2001 has been challenged in Civil Appeal No.17/2002 before Ist Additional District Judge, Raigarh, who after hearing the parties, decided the appeal on 29/11/2002, allowed the appeal, set aside the order passed by the trial Court and vide impugned judgment and decree remanded the case back to trial Court for deciding the same in accordance with law. Against the said judgment, this revision has been preferred by one of the defendants. The impugned judgment and decree passed by the Appellate Court, has been passed under Order 41, Rule 23 of the Code of Civil Procedure and the said judgment and decree is appealable under Order 43 of the C.P.C.	

XI-HC-22

(33)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Section 115 (2) of the C.P.C. reads as under:

> "The High Court shall not, under this Section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto."

Section 115 (1) of the C.P.C. empowers the High Court only to call for the records of those cases in which no appeal lies. Therefore, when the impugned judgment and decree is appealable in accordance with the provisions of C.P.C., neither this Court has jurisdiction to call for the record of concerned case nor has any power to vary or reverse the impugned judgment and decree.

Therefore, the revision, being not maintainable, is liable to be dismissed and is accordingly dismissed.

Sd/-
V.K. Shrivastava
Judge

raju

[पीछे देखिये